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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/772,416

02/06/2004

Jerzy Zawistowski

Shelf Life US

2056

7590

04/30/2007

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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1761

MAIL DATE

DELIVERY MODE

04/30/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/772,416

Applicant(s)

ZAWISTOWSKI, JERZY

Examiner

Carolyn A. Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 10-21, 23-26, 30-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang (2002) and Yoshida (2003) taken together.

Each of Yoshida and Wang discloses the antioxidant activity of phytosterols and phytosterols conjugates in vegetable oils. Yoshida discloses that phytosterols acts to protect and stabilize cell membranes from oxidation at page 279, near bottom of column 1. The claims appear to differ from Wang and Yoshida in the recitation of the antimicrobial activity of phytosterols. But the antimicrobial effect of phytosterols is an inherent property of the compound. Further one of ordinary skill in the art would expect phytosterols to protect foods from microorganisms, fungus, viruses or yeast by stabilizing the cell membranes of the food. Also phytosterols would also be expected to protect foods from microorganisms by slowing the breakdown of fats to more digestible and lower molecular weight chemical components.

Claims 6, 7, 9, 22, 27, 28 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang and Yoshida taken together as applied to claims 1-5, 10-21, 23-26 and 30-37 above, and further in view of Hallstrom.

The claims appear to differ from Wang and Yoshida in the recitation of the extent of free sterols in the composition. Hallstrom teaches a composition containing about 15% free sterol and hard butter. With the disclosure of Wang and Yoshida in hand, it would have been obvious to one of ordinary skill in the art to expect the fat of example 1 of Hallstrom to be preserved by the phytosterols of the composition.

Claims 8 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang and Yoshida taken together as applied to claims 1-5, 10-21, 23-26 and 30-37 above, and further in view of van Amerongen (6,492,538).

The claims appear to differ from Wang and Yoshida in the recitation that the composition contains a combination of free and esterified phytosterols in it. Van Amerongen teaches hydrolyzing phytosterols to obtain a composition containing 50% phytosterols esters (column 4, lines 4-11). It would have been obvious to one of ordinary skill in the art to expect

the spread of van Amerongen to be stabilized by the phytosterols in the composition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CAROLYN PADEN  
PRIMARY EXAMINER

4-24-07